ATTORNEY FOR APPELLANT:

WILLIAM BYER, JR.
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

ARTHUR THADDEUS PERRY
Special Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

SHELLIE FOARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A05-0606-CR-324
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable David W. Hopper, Judge
Cause No. 48E01-0510-FD-471

JANUARY 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Shellie Foard is appealing his sentence after entering a guilty plea to three Class A misdemeanors and a class D felony.

We affirm.

ISSUE

Foard states the issue as:

> Whether the trial court's imposition of 30 months to the Indiana Department of Correction for Driving While Suspended, a Class A Misdemeanor and Operating a Vehicle While Intoxicated, is inappropriate in light of the nature of the offense and the character of the offender.

FACTS

While on patrol, an Anderson police officer noticed a broken utility pole. The top half of the pole was being held up by wires and the bottom half was laying on the ground. The officer noticed, and then followed, a trail of fluids. He found Foard standing outside of a vehicle that had sustained heavy front-end damage. The officer noted the smell of alcoholic beverages on Foard's breath along with slurred speech, blood shot eyes, and an unsteady balance. Field sobriety tests were administered to Foard, and he failed them. A subsequent breath test was administered, and Foard tested .15%.

Foard entered a guilty plea to Count I operating a vehicle with a blood alcohol content of .15% or more, Count II operating a vehicle while intoxicated endangering a person, and Count III driving while suspended, all class A misdemeanors. He also pled guilty to Count IV, the class D felony of operating a vehicle while intoxicated. The trial

court sentenced Foard to thirty months executed on Count IV and twelve months on Count III, to be served concurrently with the sentence on Count IV.

Sentencing was set for mid-February 2005; however, Foard failed to appear. A bench warrant was issued. When Foard did appear for sentencing in mid-March 2005, he testified at the sentencing hearing that he needed drug and alcohol treatment. The trial court then imposed the sentence as set forth above.

Additional facts will be added as needed.

DISCUSSION AND DECISION

Our Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, this Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Foard posits that in light of the nature of the offense and the character of the offender his sentence is inappropriate

The issue is not whether, in our judgment, the sentence is unreasonable, but whether it is clearly, plainly, and obviously so. Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002). Additionally, our supreme court has said:

> This is not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the *class* of offenders and offenses that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Id. (Citations omitted, original emphasis).

Intertwined in Foard's argument is the argument that the trial court did not properly weigh his need for rehabilitative treatment as a mitigating factor.

It is within the trial court's discretion to decide both the existence and the weight of a significant mitigating circumstance. Samaniego-Hernandez v. State, 839 N.E.2d 798, 806 (Ind. Ct. App. 2005). A sentencing court abuses its discretion by overlooking a mitigating circumstance only when there is substantial evidence in the record of significant mitigating circumstances. *Id.* Although the court must consider evidence of mitigating factors presented by the defendant, it is not required to find that any mitigating circumstances actually exist, nor is it obligated to explain why certain circumstances are not sufficiently mitigating. *Id.* The court is not compelled to credit mitigating factors in the same way as would the defendant. *Id.*

The trial court, in considering Foard's argument, stated: "Well Mr. Foard if this were your first felony I might be inclined to think another attempt at treatment would be appropriate but on the fourth felony you've got to live with that baggage that you're carrying." Appellant's Appendix at 64. The probation department and the State recommended that Foard serve thirty months on the class D felony. Foard apparently was given six months off of the maximum enhanced argument because he pled guilty.

Insofar as the character of the offender and the nature of the offense are concerned, Foard's pre-sentence investigation reveals four pages of his prior involvement with the criminal justice system, including convictions for four felonies and several unsuccessful attempts at substance abuse treatment. The offense of driving while intoxicated under the facts of this case is serious when it is considered that Foard could

just as easily have injured or killed another person instead of merely breaking a utility pole in half. The character of the offender and the nature of the offense warrant the sentence Foard received

CONCLUSION

Foard's sentence, when analyzed under the requirements of Ind. App. R. 7(B), is appropriate.

Judgment affirmed.

ROBB, J., and MAY, J., concur.